

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

File No RH-02024639
Date: April 10, 2003

INITIAL STATEMENT OF REASONS

INTRODUCTION:

California Insurance Commissioner John Garamendi ("Commissioner") will consider the adoption of Title 10, California Code of Regulations, Chapter 5, Subchapter 7.5.1, Article 1, Sections 2695.40 to 2695.45.

The purpose of the proposed regulations is to implement, interpret, and make specific the provisions of California Insurance Code Section 10089.3.

**DESCRIPTION OF THE PUBLIC PROBLEM ADDRESSED BY EACH SUBDIVISION /
THE SPECIFIC PURPOSE AND NECESSITY OF EACH SUBDIVISION**

California Insurance Code Section 10089.3 (a) requires that the Department of Insurance adopt regulations setting forth standards governing the training of insurance adjusters in evaluating damage caused by earthquake. The statute specifically provides that the California Earthquake Authority shall make available to the Department of Insurance the standards used by the Authority in order for the Department to develop regulations that are consistent with the standards used by the Authority. Section 10089.3 goes on to provide that insurers train and accredit adjusters regarding the regulations by December 31, 2004. The statute goes on to provide that insurers that utilize unaccredited adjusters after December 31, 2004 shall report the names and claim numbers of the claims adjusted by those adjusters to the Department.

The specific purpose of each proposed adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is set forth below.

Proposed section 2695.40

This section sets forth authority and purpose of the proposed regulations. This section is necessary because the enabling statute [California Insurance Code Section 10089] has been recently enacted and there are no existent regulations regarding the training of adjusters to evaluate earthquake damage. This section identifies both the authority under which these regulations are promulgated as well as the intended scope of these regulations. This section is

necessary as it assists persons who may be interested in determining if these regulations are applicable or of interest.

Proposed subsection 2695.41 (a)

Insurance Code Section 10089.3 requires that the Department of Insurance adopt regulations setting forth standards governing the training of adjusters in evaluating damage caused by earthquake. The statute goes on to provide that on or before December 31, 2004 the insurers shall train and accredit adjusters in accordance with these standards. The statute, however, does not define the term “accredit”. Subsection 2695.41 of the regulations provide a definition of the term “accredit” so those insurers can readily understand the obligation to accredit imposed by Insurance Code Section 10089.3.

Proposed subsection 2695.41 (b)

Insurance Code Section 10089.3 (b) specifically defines the term “insurance adjuster” to include persons individually licensed pursuant to California Insurance Code Section 14000, employees of persons licensed pursuant to Section 14000, and employees of insurers who perform activities as defined in California Insurance Code Section 14021. Subsection 2695.41 (b) reiterates this definition so that the regulated entities can understand the scope of the statute and regulations. The term “adjuster” is used throughout Insurance Code Section 10089.3 (a) interchangeably with the term “insurance adjuster”; accordingly, the definition as set forth in subsection 2695.41 (b) is set forth in the alternative so that either term can be used in the proposed regulation as well.

Proposed subsection 2695.4 (c)

Proposed subsection 2695.41 (c) sets forth a definition of the term “insurers” used in these regulations. The enabling statute [California Insurance Code Section 10089.3] specifically mandates that insurers shall train and accredit adjusters, but the statute does not specifically delineate the classifications of insurers subject to the statute. Proposed section 2695.41 (c) provides such a definition and specifies that “insurer” means any admitted or nonadmitted insurer as defined in California Insurance Code Sections 23, 24 and 25 that issues a policy of insurance covering the peril of earthquake. This subsection provides needed clarity.

Proposed subsection 2695.41 (d)

Proposed subsection 2695.41 (d) sets forth the definition of the terms “training” or “train” as used in these regulations. The enabling statute [California Insurance Code Section 10089.3] requires that the department shall adopt regulations setting forth standards governing the training of insurance adjusters. The statute goes on to mandate that on or before December 31, 2004 insurers must train and accredit adjusters in accordance with these standards. The statute, however, does not provide any definition of the term “train” or “training.” Proposed subsection 2695.41 (d) provides such a definition and specifies that training means to provide a course of instruction that meets the standards set forth in subsection 2695.42. Finally, the subsection provides that an adjuster trained and accredited by one insurer shall not be required to be retrained and reaccredited in order to adjust claims for a different insurer. This subsection provides needed clarity and helps to implement, interpret and makes specific California Insurance Code Section 10089.3.

Proposed subsection 2695.42

The enabling statute [California Insurance Code Section 10089.3] specifically mandates that insurers shall train and accredit adjusters; however, the statute does not address the issue of whether or not entities other than the insurer can provide such training for adjusters on behalf of insurers. This proposed subsection mandates that every insurer shall provide training to all adjusters requesting such training and then goes on to provide that an insurer may provide the required training by sponsoring a course of instruction provided by another entity. The regulation then goes on to require that the insurer sponsoring the course of instruction ensure that the course of instruction sponsored meets all of the requirements set forth at 2695.42 (a)-(h). This subsection also reiterates the statutory provision that once an adjuster has been trained and accredited by one insurer they are not required to be re-trained or be re-accredited in order to work for a different insurer. This subsection, as a whole, provides needed clarification in one subsection of the insurer’s statutory obligation to provide training to adjusters and the methods by which it may be accomplished. Further, by allowing the training function to be delegated the subsection allows insurers flexibility so that they may more easily comply with the requirements imposed by California Insurance Code Section 10089.3.

Proposed subsection 2695.42 (a)

The enabling statute [California Insurance Code Section 10089.3] specifically mandates that insurers shall train and accredit adjusters. The statute further provides that for the purposes of this section the California Earthquake Authority shall make available to the Department of Insurance the standards used by the authority in order for the Department to develop regulations that are consistent with the authority’s standards. The statute does not prescribe any particular content for the regulations to be promulgated. The CEA Claims Manual Section [7-3] specifically provides that all claims representatives handling claims in California must abide by

the California Fair Claims Settlement Practices Regulations. The Commissioner has proposed the adoption of the requirement that all adjusters be trained regarding these as a necessary element of any course of instruction because it is the current law in California that prescribes the manner in which all claims are to be handled. Further, this subsection is necessary because it implements, interprets and makes specific the enabling statute.

Proposed subsection 2695.42 (b)

The enabling statute [California Insurance Code Section 10089.3] specifically mandates that insurers shall train and accredit adjusters. The statute further provides that for the purposes of this section the California Earthquake Authority shall make available to the Department of Insurance the standards used by the authority in order for the Department to develop regulations that are consistent with the authority's standards. On November 18, 2002 the Commissioner held a pre-notice workshop regarding these regulations. Invitees included insurer groups, independent adjuster groups and consumer advocates. Written comments were solicited from participants regarding the original pre-notice draft and the Commissioner has incorporated some of the comments in the regulations as set forth here.

The statute does not prescribe particular content for the training standards to be promulgated. The CEA Claims Manual at Section [7-15] provides a description of the manner in which scope of loss should be prepared. The Commissioner has proposed subsection 2695.42 (b) which clarifies the obligation of the insurer in preparing a scope of loss in that it sets forth that adjusters must be trained in how to conduct a thorough examination of all parts of the property to be inspected [including attics, crawlspaces, roofs, chimneys, foundations and structural areas]. The subsection further provides that the adjuster must be trained in how to make a complete listing of all recent earthquake damage, building code upgrade issues and procedures to be followed if additional earthquake damage is found after repair of earthquake damage is begun. This subsection also includes the requirement [suggested by workshop participants] that adjusters be trained with respect to building code upgrade issues.

This subsection is not identical in content to the identified section in the California Earthquake Authority Claims Manual, however, it imposes training requirements for adjusters that are consistent with the requirements set forth in the CEA Claims Manual to ensure that a scope of loss is thorough and well documented. This subsection is necessary to implement, interpret and make specific California Insurance Code Section 10089.3.

Proposed subsection 2695.42 (c)

The enabling statute [California Insurance Code Section 10089.3] specifically mandates that insurers shall train and accredit adjusters. The statute further provides that for the purposes of this statute the California Earthquake Authority shall make available to the Department of Insurance the standards used by the authority in order for the Department to develop regulations

that are consistent with the authority's standards. The statute does not prescribe particular content for the training standards to be promulgated. The CEA Claims Manual contains a description of procedures for creating estimates of loss at [7-15]. Subsection 2695.42 (c) is consistent but not identical to the standard provided by the CEA. The Commissioner has proposed a simplified regulatory subsection that provides that an adjuster shall be trained to create or obtain an accurate estimate of all covered earthquake damage. The subsection further provides that the adjuster shall be trained regarding the appropriate level of detail and documentation necessary to support the estimate and finally the subsection requires that adjusters must be trained to reevaluate the loss estimate if the actual cost of repair differs from that of the original estimate.

This subsection contains many of the elements set forth at Section [7-15] of the CEA Claims Manual but this subsection does not contain all of the language as set forth in the CEA Claims Manual section. Requirements regarding investigation of subsequently reported damage and when to retain an engineer or other expert have been deleted from the proposed subsection [and relocated to other subsections within the proposed regulation] for purposes of clarity and ease of use. Further, the requirements regarding use of software, diagramming and measuring of rooms and photographs have been replaced with more general language that does not require specific technology. The Commissioner believes that a more general requirement of an accurate and well-documented estimate will not become outdated as technological advances in estimating and documentation occur. This subsection is necessary to implement, interpret, and make specific California Insurance Code Section 10089.3.

Proposed subsection 2695.42 (d)

The enabling statute [California Insurance Code Section 10089.3] specifically mandates that insurers shall train and accredit adjusters. The statute further provides that for the purposes of this statute the California Earthquake Authority shall make available to the Department of Insurance the standards used by the authority in order for the Department to develop regulations.

The statute does not prescribe particular content for the training standards to be promulgated. The CEA Claims Manual contains a section that delineates when to retain an engineer or expert [Section 7-8]. Subsection 2695.42 (d) is consistent with but not identical to the identified CEA standard and provides that adjusters shall be trained how to evaluate visible damage and indicia of hidden damage to determine when to consult with an engineer or other expert. The Commissioner believes that a more general requirement of training regarding when to consult with an engineer will not become outdated as technological advances in estimating and documentation occur.

This subsection is necessary to implement, interpret, and make specific California Insurance Code Section 10089.3.

Proposed subsection 2695.42 (e)

The enabling statute [California Insurance Code Section 10089.3] specifically mandates that insurers shall train and accredit adjusters. The statute further provides that for the purposes of this section the California Earthquake Authority shall make available to the Department of Insurance the standards used by the authority in order for the Department to develop regulations.

The enabling statute does not prescribe particular content for the training standards to be promulgated. The claims manual contains Section [1-9] that requires insurers participating in the CEA to fully disclose to the insured their right to use the California Earthquake Mediation Program set forth at California Code of Regulations, Title 10, Chapter 5, Subchapter 7.5, Sections 2696.1-10. Subsection 2695.42 (e) is consistent with the identified CEA standard and provides that adjusters shall be trained regarding the California Earthquake Mediation Program. The Commissioner believes that this provision is an essential component of training of insurance adjusters to ensure that earthquake adjusters are trained to not only accurately determine losses but to act fairly to resolve claims. This subsection clarifies the insurer's obligation in training adjusters and interprets as well as makes specific California Insurance Code Section 10089.3.

Proposed subsection 2695.42 (f)

The enabling statute [California Insurance Code Section 10089.3 (a)] requires the Department of Insurance to adopt regulations setting forth standards governing the training of insurance adjusters in evaluating earthquake damage. The enabling statute further provides that the California Earthquake Authority shall make available to the Department of Insurance standards used by the California Earthquake Authority in order for the Department of Insurance to develop regulations consistent with those of the California Earthquake Authority. The enabling statute does not prescribe any particular content for the training standards to be promulgated and does not specify any standards by which an adjuster may determine whether concrete needs to be repaired or replaced by injecting epoxy or other methods.

The CEA Claims Manual contains Section [7-16]. This section requires adjusters to determine with the help of an appropriate expert whether concrete needs to be replaced or repaired by injecting epoxy or other methods. Subsection 2695.42 (f) has been drafted so that it is consistent with the identified CEA standard in that it provides that adjusters shall be trained how to determine the differences between pre-existing cracks in the concrete of structures and new cracks caused by an earthquake. Further this subsection requires adjusters to be trained in methodology for determining when repair or replacement of the concrete is appropriate and proper methods for concrete repair including but not limited to injected epoxy methods. This subsection is necessary to implement, interpret, and make specific California Insurance Code Section 10089.3.

Proposed subsection 2695.42 (g)

The enabling statute [California Insurance Code Section 10089.3 (a)] requires the Department of Insurance to adopt regulations setting forth standards governing the training of insurance adjusters in evaluating earthquake damage. The enabling statute further provides that the California Earthquake Authority shall make available to the Department of Insurance standards used by the California Earthquake Authority in order for the Department of Insurance to develop regulations

consistent with those of the California Earthquake Authority. The enabling statute does not prescribe any particular content for the training standards to be promulgated and does not specify any training standard that requires an adjuster to learn the current law regarding the obligation of the insurer to fully investigate earthquake damage that is discovered after the claim is submitted to the insurer.

The CEA Claims Manual at Section [7-15] provides that adjusters shall be trained on the current law regarding the obligation of the insurer to fully investigate earthquake damage that is discovered or reported after the claim is submitted to the insurer. Subsection 2695.42 (g) is consistent with, yet broader in scope than the identified CEA standard in that it provides that adjusters shall be trained on the current law regarding an insurer's obligation to investigate any discovered or reported earthquake damage. The Commissioner has adopted this broader language so that the adjuster is trained to thoroughly and accurately assess all damage; it is the Commissioner's view that that this leads to more thorough inspection and provides greater protection for the insured. This subsection is necessary to implement, interpret and make specific and clarify the insurer's obligation under California Insurance Code Section 10089.3.

Proposed subsection 2695.42 (h)

The enabling statute [California Insurance Code Section 10089.3 (a)] requires the Department of Insurance to adopt regulations setting forth standards governing the training of insurance adjusters in evaluating earthquake damage. The enabling statute further provides that the California Earthquake Authority shall make available to the Department of Insurance standards used by the California Earthquake Authority in order for the Department of Insurance to develop regulations consistent with those of the California Earthquake Authority. The enabling statute does not prescribe any particular content for the training standards to be promulgated and does not specify any training standard that requires an adjuster to be trained regarding the existence of Small Business Administration and Federal Emergency Management Administration programs intended to assist earthquake victims. The California Earthquake Authority Claims Manual at Section [7-6] states that policyholders may need to look to the Small Business Administration for low interest loans or to FEMA for grants and that, therefore, adjusters must provide documentation such as loss statements or denial of claim in a timely fashion. Subsection 2695.42 (h) is consistent with the identified standard in that it provides that adjusters shall be trained regarding the existence of Small Business Administration and Federal Emergency Management Administration programs intended to assist earthquake victims.

Proposed subsection 2695.43 (a)

The enabling statute [California Insurance Code Section 10089.3] specifically mandates that insurers train and accredit adjusters. The statute further provides that for the purposes of this section the California Earthquake Authority shall make available to the Department of Insurance the standards used by the authority in order for the Department to develop regulations consistent with those standards. The enabling statute does not prescribe or restrict the particular content of the training standards to be promulgated in that it simply states insurers shall train and accredit adjusters; the statute, however, does not specify any procedures to be followed by insurers in providing accreditation. Subsection 2695.43 (a) addresses this issue and sets forth that certificates shall be provided by the insurer or training entity sponsored by the insurer to any student successfully completing the training. Subsections 2695.43 (1) and (2) further amplify the regulatory scheme and require that the certificate set forth basic identifying information regarding the adjuster and the course provider or insurer. Subsection 2695.43 (3) provides that the certificate issued contain a statement certifying that the adjuster has completed training that meets the standards set forth in these regulations. Subsection 2695.43 (4) requires that both the adjuster and the trainer sign the certificate. Finally, subsection 2695.43 (5) requires that the certificate contain the date training is completed. This subsection is necessary to clarify, implement and make specific California Insurance Code Section 10089.3. This subsection provides a clear and understandable description of the certificate that the insurer or course provider and the adjuster must complete in order to complete the accreditation process.

Proposed subsection 2695.43 (b)

The enabling statute [California Insurance Code Section 10089.3] specifically mandates that insurers shall train and accredit adjusters. The statute, however, does not specify how often the adjuster accreditation must be renewed. Subsection 2695.43(b) specifies that accreditation must be renewed every three years. This subsection sets forth how often the insurer must accredit an adjuster. The Commissioner has determined that a requirement that accreditation must be renewed every three years is a reasonable one that is not burdensome on either the insurer or adjuster. This subsection is necessary so that the insurer can understand how to develop and implement an accreditation process that satisfies California Insurance Code Section 10089.3.

Proposed subsection 2695.44

The enabling statute [California Insurance Code Section 10089.3] specifically mandates that insurers shall train and accredit adjusters who evaluate earthquake damage. The statute, however, does not specify recordkeeping or record retention procedures for the insurer or training provider regarding records of adjuster training. Subsection 2695.44 (a) specifically requires insurers and training providers to maintain records of all adjusters completing a training program for a period of five years. Subsection 2695.44 goes on to provide that an insurer using an adjuster to evaluate earthquake damage must maintain a record of that adjuster's accreditation for a period of five years and that the record must contain the name of the adjuster and license

number (if applicable), the date training is completed and the name, address and telephone number of the training entity. The Commissioner specifically selected a five year record retention schedule as it is long enough to ensure access to adjuster records should the need arise to review such records. Further, the record retention requirement is not so long that it imposes an undue burden on the insurer and is consistent with the record retention schedule used by the CEA in handling claims. This subsection is necessary to implement, interpret and make specific California Insurance Code Section 10089.3.

Proposed subsection 2695.45

California Insurance Code Section 10089.3 (a) requires that the Department of Insurance adopt regulations setting forth standards governing the training of insurance adjusters in evaluating damage caused by earthquake. The statute specifically provides that the California Earthquake Authority shall make available to the Department of Insurance the standards used by the Authority in order for the Department to develop regulations that are consistent with standards used by the authority. Section 10089.3 goes on to provide that insurers train and accredit adjusters regarding these standards by December 31, 2004.

The statute further provides that after December 31, 2004 an insurer using one or more adjusters not trained and accredited in accordance with the statute shall submit the name of the adjuster and numbers of the claims adjusted by that adjuster to the Department of Insurance.

The statute, however, does not specify any schedule for reporting of unaccredited adjusters. Subsection 2695.45 addresses this problem in that it specifies that insurers using one or more adjusters who are not trained or accredited in accordance with the regulations shall annually submit a list of those adjusters who have not completed training to the Department of Insurance.

This subsection further specifies that the first reporting period for these regulations begins January 1, 2005 and ends December 31, 2005. Insurers are required to report the specified information within 30 calendar days of the end of the reporting period. This subsection is necessary to fully amplify and clarify the insurer's statutory obligation and the deadlines to report the use of unaccredited adjusters to the Department of Insurance. The initial reporting period and reporting requirements were specifically selected to begin immediately after the statutory deadline for training and accreditation of adjusters has occurred to ensure that the statutory scheme can become fully operative as quickly as possible.

IDENTIFICATION OF STUDIES AND REPORTS

In developing these regulations the Commissioner has complied with the statutory mandate of

California Insurance Code Section 10089.3 in drafting these regulations so that they are consistent with the training standards provided to the Department by the California Earthquake Authority. The document provided to the Department of Insurance by the California Earthquake Authority is entitled: Claims Manual, California Earthquake Authority, February 28, 2003. The following portions of this document have been relied upon in drafting these regulations: Sections [1-9][7-3][7-6][7-8][7-15][7-16]. These portions of the above described Claims Manual are contained in the rulemaking file and can be viewed by contacting the Contact Persons set forth in the Notice of Proposed Action.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

Adoption of the proposed regulations would not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

The Commissioner has not identified alternatives to any of the sections or subdivisions thereof which would lessen any adverse impact on small businesses, yet still achieve the desired regulatory objective.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that small businesses may incur additional expenses as a result of these regulations. These expenses may include the value of time spent by adjusters in training regarding these regulations as well as the value of time spent by adjusters traveling to and from training facilities.

Date:

JOHN GARAMENDI
Insurance Commissioner

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